

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE BIOPURE CORPORATION
SECURITIES LITIGATION**

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Master Docket No. 1:03-CV-12628 (NG)

Assigned to Judge Nancy Gertner

DEFENDANTS MOTION FOR JUDICIAL NOTICE OF SEC FILINGS¹

In connection with this Court's consideration of Defendants' motion to dismiss the amended complaint and opposition to Plaintiffs' motion for leave to amend, Defendants respectfully move this Court to take judicial notice of publicly available documents filed by Biopure with the Securities and Exchange Commission that are germane to the Defendants' motion to dismiss and opposition to Plaintiffs' motion for leave to amend. Defendants make this motion with respect to documents attached hereto as Exhibit A (certain Form 4's concerning Defendant Moore's purchases of Biopure's stock during the class period, filed with the SEC).

This Court may take judicial notice of the aforesaid documents without converting the motion to dismiss into a motion for summary judgment. *See, e.g., In re Stone & Webster, Inc. Sec. Litig.*, 253 F. Supp. 2d 102, 128 & n. 11 (D. Mass. 2003) (district court may consider documents required to be filed and actually filed with the SEC on a motion to dismiss); *see also* Fed. R. Evid. 201(b)(2).

The Form 4's attached hereto demonstrate that Defendant Moore purchased stock during the putative class period, relevant to Plaintiffs' burden of pleading a strong inference of *scienter*.

¹ This motion is filed on behalf of Defendants Biopure Corporation, Thomas A. Moore, Howard P. Richman, Carl W. Rauch, Charles A. Sanders and J. Richard Crout (collectively, the "Defendants").

WHEREFORE, Defendants respectfully request that this motion be granted in all respects.

February 1, 2006

Respectfully submitted,

**BIOPURE CORPORATION, THOMAS A.
MOORE, HOWARD P. RICHMAN, RONALD
RICHARDS, CARL W. RAUSCH, CHARLES
A. SANDERS AND J. RICHARD CROUT**

By their attorneys,

/s/ Michael D. Blanchard

Robert A. Buhlman, BBO #554393
Michael D. Blanchard, BBO#636860
BINGHAM McCUTCHEN LLP
150 Federal Street
Boston, MA 02110
(617) 951-8000

RULE 7.1(A)(2) CERTIFICATION

I hereby certify that counsel for Defendants conferred with counsel for Plaintiffs in good faith to resolve or narrow the issues presented in this motion.

/s/ Michael D. Blanchard

Michael D. Blanchard

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above pleading was electronically served upon the attorneys of record for all parties on February 1, 2006.

/s/ Michael D. Blanchard

Michael D. Blanchard

EXHIBIT A

FOR-I 4

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

[illegible]

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly by the reporting person. If the form is filed by more than one reporting person, see Instruction 4(b)(v). (Part 2)

**Table II — Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)**

Apr-14-03 09:34am From-ERNST & YOUNG
 Apr-11-03 09:38pm From-ERNST & YOUNG

6178586680

T-303

P.03/04

F-317

6178586680

T-298

P.02/08

F-300

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 302 of the Investment Company Act of 1940

FORM 4

See this box if too large
 to print on Form 4
 Report to Section 16, Form 4
 Form 5 obligatorily
 continue. See Instruction 1(a).

Name and Address of Reporting Person*		2. Name, Street and Town or Trading Symbol		3. If Securities Security Number of Reporting Person (Voluntary)		4. Submit for Month/Year		5. If Amendment, Date of Original (Month/Year)		6. Relationship of Reporting Person to Issuer (Check all applicable)		7. Individual or Joint/Group Filings (Check applicable box)		8. Form filed by One Reporting Person (Form filed by More than One Reporting Person)	
Mr. Thomas A.		Biopure Corporation HPCR		016-38-7049		April 11, 2003				Director		Individual or Joint/Group Filings		Form filed by One Reporting Person	
5 Cherry Hill Road										X Officers (give title below)		X Form filed by One Reporting Person		Form filed by More than One Reporting Person	
Proctor, NJ 08540										10% Owner		X Form filed by One Reporting Person		Form filed by More than One Reporting Person	

Title of Security (Instr. 3)	Transaction Date (Month/Day/Year)	Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		Price	5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Percent Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Amount	(A) or (D)				
1st A Common Stock	4/9/03	P	5,100	A	\$3.12		D	
1st A Common Stock	4/9/03	P	800	A	\$3.13		D	
1st A Common Stock	4/9/03	P	1,900	A	\$3.14		D	
1st A Common Stock	4/9/03	P	15,000	A	\$3.15		D	
1st A Common Stock	4/9/03	P	900	A	\$3.17		D	
1st A Common Stock	4/9/03	P	5,400	A	\$3.19		D	
1st A Common Stock	4/9/03	P	200	A	\$3.20		D	
1st A Common Stock	4/9/03	P	600	A	\$3.21		D	
1st A Common Stock	4/9/03	P	100	A	\$3.22	316,612	D	

* If a separate form for each class of securities has been filed, or if indirectly owned securities are included, report as a separate form for each class of securities. See Instruction 4(b)(v).

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

[illegible]

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly by the reporting person. If the form is filed by more than one reporting person, see Instruction 4(b)(v).

FORM 4 (continued)[illegible]

Explanation of Responses:

****Intentional misstatements or omissions of facts constitute Federal Criminal Violations.
See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)**

Note: File three copies of this Form, one of which must be manually signed.
If space provided is insufficient, see instruction 6 for procedures

1000 V 1000
Signature of Reporting Person
Attorney-in-fact

4-16-03
Date